

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
WESTERN DIVISION  
No. 5:15-CR-272-D  
No. 5:16-CV-868-D

LEVI GEREAU, )  
 )  
 Petitioner, )  
 )  
 v. )  
 )  
 UNITED STATES OF AMERICA, )  
 )  
 Respondent. )

**ORDER**

On October 24, 2016, Levi Gereau (“Gereau” or “petitioner”) filed a motion to vacate, set aside, or correct his 36-month sentence pursuant to 28 U.S.C. § 2255 [D.E. 33]. On November 14, 2016, Gereau filed an amended section 2255 motion to vacate [D.E. 35]. On March 29, 2017, the government moved to dismiss the motion [D.E. 46] and filed supporting memorandum [D.E. 47]. On April 16, 2018, the court referred Gereau’s ineffective-assistance claim concerning the alleged failure to file a notice of appeal to Magistrate Judge Gates for an evidentiary hearing and a memorandum and recommendation (“M&R”). See [D.E. 49]. On May 16, 2018, Judge Gates held an evidentiary hearing. See [D.E. 54]. At the hearing, Gereau, through counsel, announced that he was voluntarily dismissing his section 2255 motion in its entirety. See [D.E. 55]. Thus, Judge Gates recommended that the court dismiss Gereau’s section 2255 motion and that the related proceedings be dismissed pursuant to Rule 41(a)(2) of the Federal Rules of Civil Procedure. See id. at 1–2. No party objected to the M&R.

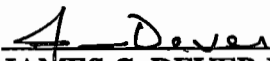
“The Federal Magistrates Act requires a district court to make a de novo determination of those portions of the magistrate judge’s report or specified proposed findings or recommendations

to which objection is made.” Diamond v. Colonial Life & Accident Ins. Co., 416 F.3d 310, 315 (4th Cir. 2005) (emphasis, alteration, and quotation omitted); see 28 U.S.C. § 636(b). Absent a timely objection, “a district court need not conduct a de novo review, but instead must only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.” Id. (quotation omitted).

The court has reviewed the entire record, including the M&R, the transcripts, and the briefs. The court agrees with the analysis in the M&R. See [D.E. 55].

In sum, the court ADOPTS the findings and conclusions in the M&R [D.E. 55], DISMISSES Gereau’s motions to vacate, set aside, or correct his sentence pursuant to 28 U.S.C. § 2255 [D.E. 33, 35], and DENIES as moot the government’s motion to dismiss [D.E. 46]. The court DENIES a certificate of appealability. See 28 U.S.C. § 2253(c); Miller-El v. Cockrell, 537 U.S. 322, 336–38 (2003); Slack v. McDaniel, 529 U.S. 473, 484 (2000). The clerk shall close the case.

SO ORDERED. This 14 day of June 2018.

  
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JAMES C. DEVER III  
Chief United States District Judge